



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
4400 PGA BOULEVARD, SUITE 500
PALM BEACH GARDENS, FL 33410

JUL 31 2009

REPLY TO
ATTENTION OF

Palm Beach Gardens Regulatory Office
Modification #1

South Florida Water Management District
Attn: Ms. Carol Wehle
3301 Gun Club Road
West Palm Beach, FL 33406

Dear Ms. Wehle:

The U.S. Army Corps of Engineers (Corps) has completed the review and evaluation of your modification request received by letter on June 17, 2009, in which you asked to revise the special condition 16 authorized by Department of the Army permit number SAJ-2008-3461. The original permit authorized the construction of a stormwater treatment area (STA) on Compartment C of the Everglades Agricultural Area (EAA) in Hendry County. The project is located in the southwest corner of Hendry County at the intersection of Palm Beach, Broward, and Hendry County lines. The Buildout area lies between STAs 5-3 and STA 6-2 and between the C-139 Annex and the Rotenberger Wildlife Management Area (RWMA).

The proposed modification requests to revise the special condition number 16 in the permit issued on March 12, 2009, which originally required upland/wetland enhancement and preservation from the 1106 acres of non-effective treatment area within the footprint of Compartment C to occur within 12 months from the date of initiating the authorized work, which began on April 13, 2009. The SFWMD has requested an extension to the permit time limitation for the removal of the exotic vegetation until November 12, 2010, which is a seven month delay.

The delay is requested to coincide with the project wide dewatering activities. The on-site mitigation area would not receive the full hydrological benefits that will be realized during the operational phase of the project. Therefore, the SFWMD would treat the existing exotic and nuisance vegetation approximately 8 weeks prior to the end of construction (December 31, 2010) and also implement a controlled burn just days before inundation, which is needed for the operational phase of the

project. This schedule will prevent any new unwanted vegetation from emerging during construction, eliminate the need to re-treat the area once construction is complete, and also prevent potential muck fires associated with prescribed burning by maintaining saturated soil conditions in the mitigation area.

To determine if the 7-month delay could be offset through the original mitigation plan, the Corps has applied a temporal factor to the mitigation assessment. The original mitigation plan, which did not incorporate a temporal factor, allowed a gain of 33.18 credits for the proposed work in the non-effective treatment area. The temporal factor was not applied because the mitigation would have been accomplished within one year. Applying a two-year temporal factor (0.9833) to the available credits, the available lift for the non-effective treatment area would be reduced to 32.62 credits. The overall lift of the project resulted in a gain of 18.79 credits. Applying the temporal factor for the non-effective treatment area, the overall lift of the project would be reduced to 18.23 credits. Therefore, the available mitigation plan is sufficient to offset the proposed delay.

The SFWMD has also requested by phone and by email dated July 23, 2009, that the ditches within the non-effective treatment area be excavated to remove exotic vegetation and allow for improved water flow. Approximately 800 linear feet of vegetation within the ditches would be cleared and 200 cubic yards of material would be side-cast adjacent to the ditches. The Corps agrees that removing the exotic vegetation within the ditches meets the conditions of the permit because exotic and nuisance plant species removal is allowed, and the hydrology in the area is required to be maintained.

Although the side-casting would constitute fill, the Corps understands that a project of this magnitude does take great effort to coordinate the contracts and meet the requirements with technical feasibility. As shown in the above temporal assessment, the delays in implementing the mitigation objectives for the non-effective treatment area are acceptable. Therefore, the side-casting of the vegetation can occur within the non-effective treatment area. Although not specified in the special

conditions of the permit, the Corps would request that the side-casting only occur in uplands.

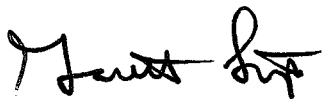
The impact of your proposal on navigation and the environment have been reviewed and found to be insignificant. The permit is hereby modified in accordance with your request and in accordance with the condition above. You should attach this letter and enclosure to the permit. All other conditions of the permit remain in full force and effect. If you have any questions concerning permit modification, please contact the project manager Alisa Zarbo at the letterhead address, by telephone at 561-472-3516 or by electronic mail at Alisa.A.Zarbo@usace.army.mil.

Thank you for your cooperation with our permit program. The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit the following link and complete our automated Customer Service Survey:

http://www.saj.usace.army.mil/permit/forms/customer_service.htm.

Your input is appreciated - favorable or otherwise.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:


for Alfred A. Pantano, Jr.
Colonel, U.S. Army
District Commander

Enclosure

Copy Furnished:

CESAJ-RD-PE

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: SFWMD		File Number: SAJ-2008-3461	Date: Jul 31 2009
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
X	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/ceowo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Project Manager as noted in letter

If you only have questions regarding the appeal process you may also contact:

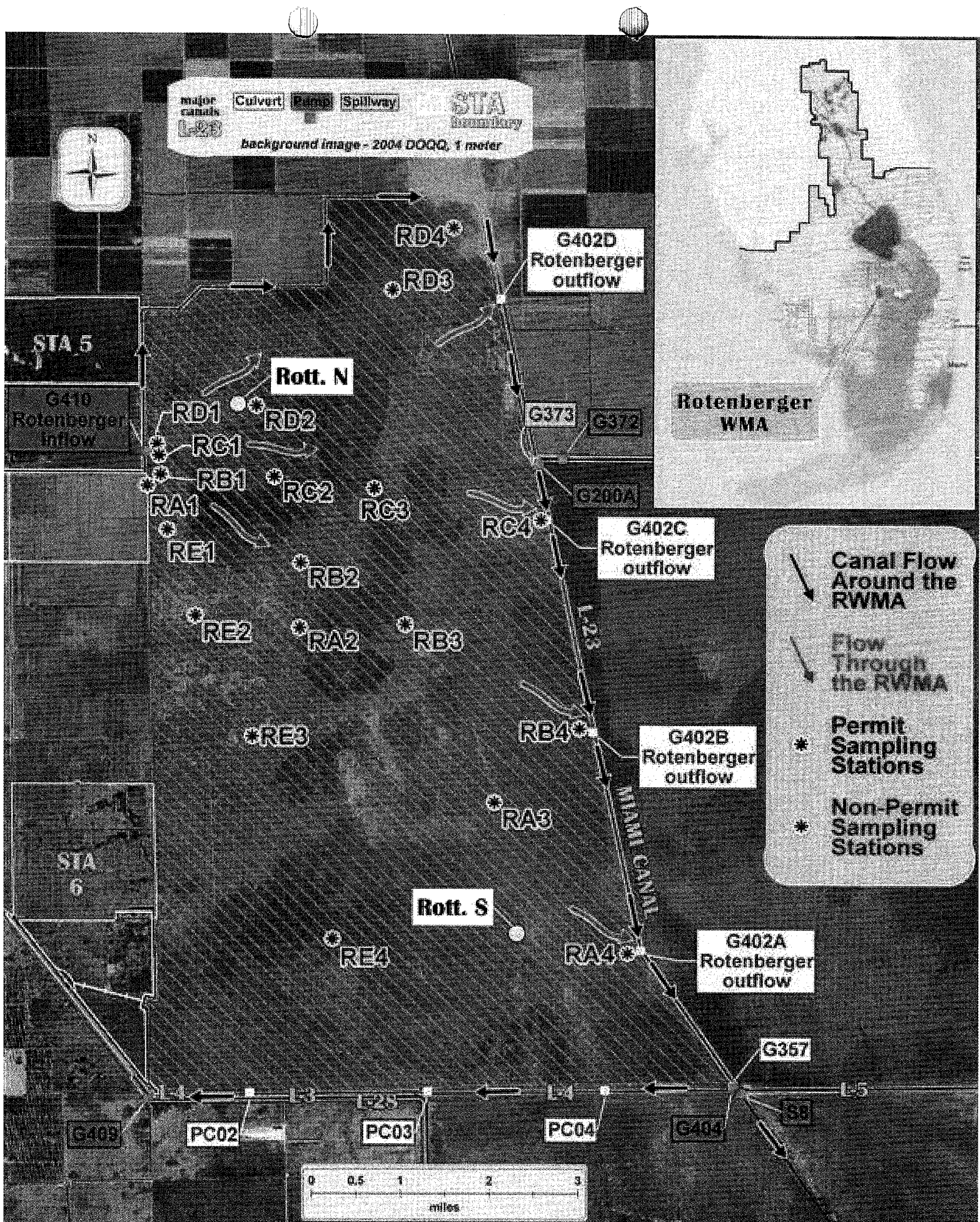
**Michael F. Bell
404-562-5137**

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:



Zarbo, Alisa A SAJ

From: Bearzotti, Ronald [rbearzot@sfwmd.gov]
Sent: Thursday, July 23, 2009 11:39 AM
To: Zarbo, Alisa A SAJ
Cc: Andreotta, Holly; Ferrano, Frank; Vince, Georgia
Subject: COMP C_Ag Ditch Clearing_Within Mitigation Area

Alisa;

This email is in response to the questions you raised in our phone conversation this week regarding the District's request to remove minor amounts of material from ditches which exists in the Compartment C on-site mitigation area for the purposes of allowing the construction contractor to have better ability to direct water around the site.

- 1) Regarding your question on the overall content of the material to be removed. It will be mostly existing exotic vegetation however some it will be impossible to avoid moving some associated soil/sediment from the root zone during vegetative clearing.
- 2) As we indicated, only about 500-800 linear feet of ditches to be cleared, only adding up to approximately 200 CY of material.
- 3) Although the District realizes this clearing will take place in the mitigation area, this activity will not be impacting the ultimate fate of the area, as the final plan is for these ditches to remain and are expected to provide better water conveyance throughout the mitigation area during the operational phase. It is our preference to allow the material to be placed next to the ditches. This too will not affect the ultimate objective for the mitigation area as the exotic and nuisance vegetation removal activities (treatment and burning) as described in our June 16th correspondence letter to you, shall also remove any material left from this clearing activity.

Please let us know if you have any questions, we look forward to hear back from you as our construction contractor is awaiting your response.